***THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY**

+ WRIT **PETITION NO : 5921 of 2004**

% 10-11-2005

B.NARSIMHULU AND OTHER … PETITIONERS

VS.

$ DISTRICT COLLECTOR, MEDAK

AND OTHERS … RESPONDENTS

! Counsel for the Petitioners: SRI.N.SUBBA REDDY

^ Counsel for the Respondent Nos.1&2: GOVT. PLEADER FOR L.A.

Counsel for the Respondent No.3: V.Srinivas Advocate.

Counsel for the Respondent No.4: S.Niranjan Reddy

Counsel for the Respondent No.5: E.Madan Mohan Rao.

< Gist:

> Head Note:

? CITATIONS:

AIR 2003 SC 3140

[2] AIR CALCUTTA 565

[3] AIR 2003 SC 3140

[4] 1979(2) AWR 107 (AP)

[5] 1979(2) AWR 107 (AP)

[6] AIR 1963 SC 1890

[7] AIR 1962 MP 80

[8] AIR 1965 SC 646

THE HONOURABLE SRI JUSTICE

B.SESHASAYANA REDDY

WRIT PETITION NO.5921 OF 2004

DISPOSED OF ON 10-11-2005.

BETWEEN:

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AND

DISTRICT COLLECTOR, MEDAK

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THE HONOURABLE SRI JUSTICE

B.SESHASAYANA REDDY

WRIT PETITION NO.5921 OF 2004

O R D E R :

1. In this writ petition the petitioners pray for quashing of notification under Sec.4 dated 10.4.2003 and other consequential proceedings under the provisions of Land Acquisition Act 1 of 1894 as amended by Act XXXVIII of 1923 in so far as they relate to Sy.No.335 of Zaheerabad village and Mandal, Medak as violative of mandatory provisions of Land Acquisition Act and objects of A.P. Boodan and Gramdan Act, 1965 and Rules made there under.

2. The case of the petitioners in brief is :

4th respondent-Secretary, A.P. Boodan Yagna Board, Hyderabad allotted Ac.5-00

cents each to the petitioners in S.No.335 of Zaheerbad after collecting Rs.1,750/- each. The petitioners made the land fit for cultivation by putting their hard work and labour. 4th respondent addressed a letter to the Mandal Revenue Officer for grant of pattas in prescribed form in favour of the petitioners as required under Rule 9 of A.P.Boodan and Gramdan Rules, 1965 (hereinafter referred to as Rules). The Government of Andhra Pradesh through Memo dated 25.2.83 issued instructions to the revenue authorities to issue D-Form pattas as per the allotment made by 4th respondent. 3rd respondent- A.P.Industrial Infrastructure Corporation Limited (hereinafter referred to as 3rd respondent) submitted proposals to acquire land at Zaheerabad for the benefit of 5th respondent-M/s.Frigerio Conserve Allane Limited (hereinafter referred to as Company). The District Collector, Medak i.e. 1st respondent initiated proceedings under Land Acquisition Act (hereinafter referred to L.A.Act) and published notification under section 4(1) of L.A.Act. The said notification came to be published in Deccan Chronicle on 6.4.2003. 2nd respondent-Special Deputy Collector (Land Acquisition) (Industries), Hyderabad was appointed as LAO and enquiry u/s 5A of the L.A.Act was dispensed with by invoking urgency clause u/s 17(4) of L.A. Act. The petitioners filed this writ petition questioning the validity of the notification issued u/s 4(1) and dispensation of Enquiry u/s 5A by invoking urgency clause u/s 17(4) of the L.A.Act. It is the contention of the petitioners that the purpose for which their lands are proposed to be acquired is not for public purpose and the alleged purpose is contrary to the aims and objectives of Mahatma Gandhi and Acharya Vinobha Bhave. It is the further contention of the petitioners that since the acquisition is for private company, procedure prescribed under part VII of the L.A. Act is required to be followed and since the said procedure is not followed, acquisition proceedings are liable to be set aside. Yet another contention has been raised that invocation of urgency clause in the circumstances of the case is wholly unwarranted and thereby dispensing with enquiry u/s 5A is not sustainable.

3 . M/s.Frigerio Conserve Allane Limited, the beneficiary of the acquisition proceedings has come on record as 5th respondent by an order dated 29.7.2005 passed in WPMP.No.21588 of 2004.

4. Respondents filed counter affidavits. It is stated in the counter affidavit filed on behalf of respondents 1 and 2 that 4th respondent submitted written claim before the LAO stating that the land in S.No.335 admeasuring Ac.44.36 cents situated at Zaheerabad village was donated by one Mallapuram Chandraiah, S/o Anumaiah. Out of which an extent of Ac.4-36 guntas is covered by graveyard and requested payment of compensation for the land affected under acquisition. Accordingly compensation payable to an extent of Ac.25-19 cents has been awarded in favour of 4th respondent. It is further stated in the counter affidavit that the Executive Director (Estates) A.P.Industrial Infrastructure Corporation Limited submitted requisition for acquisition of land for allotment to company. The Collector, Medak in turn sent the said requisition for initiating the land acquisition proceedings. Accordingly land acquisition proceedings have been initiated. The petitioners are not recorded as owners or possessors of the suit land in the revenue records and therefore their names have not been published in the notification u/s 4 and declaration u/s 6 of L.A. Act. The activities of the Company are livestock rearing, fish culturing, agriculture, horticulture andgreen belt connected with agro food processing industry. Thus the purpose of acquisition of land in question is for public purpose. The petitioners are not in possession of the land and possession of the land has been taken over under the cover of panchanama on 17.2.2004 and thereafter the same has been handed over to 3rd respondent. It is further stated in the counter affidavit that land has been acquired for 3rd respondent but not for the Company. The requisitioning department has requested for invoking of the urgency provisions of the Act for taking possession and for allotment of the land to the company. Thus, the provisions under section 17(4) of the Act have been invoked. Reasonable opportunity was provided at every stage of the land acquisition proceedings to the persons concerned. The petitioners failed to file any representation opposing acquisition of the land since they are never in possession of the suit land. The acquisition proceedings have been completed duly following the procedure in the L.A.Act and an award has been passed on 22.3.2004.

5. Counter of 3rd respondent in brief is that it is an undertaking of A.P. Government registered as a company in 1966. The main objective of the Corporation amongst others are to acquire land, develop industrial areas and allot developed plots and

ready built sheds to needy entrepreneurs for setting up industries. The activities of the Corporation are carried on no profit and no loss basis. 5th respondent-Company has set up an industrial unit in the backward area i.e. Zaheerabad and has been running an industry since 1989 for manufacture of Agro and food products. The industry has created employment for 700 persons directly and 3000 persons indirectly apart from facilitating ancillary industries. The industry has earned foreign exchange to the tune of 26.20 millions of US dollars during the year 2002-2003 through exports of its products with turn over of Rs.118.78 crores. The company proposed to go in for expansion of its new industry and requested the Corporation to provide suitable land for the purpose. The Corporation examined the proposal and decided to allot land to the company. The Corporation requested the Collector, Medak to acquire land to an extent of Ac.42-07 cents in Zaheerabad village. The Collector, Medak examined the proposal and decided to acquire the land under Land Acquisition Act for the purpose of industrial use. Since the lands were urgently required, the Collector, Medak approved the draft notification u/s 4(1) of the L.A. Act and urgency clause came to be invoked. The draft notification was published in A.P. Gazette dated 15.4.2003. The Collector, Medak approved the draft declaration u/s 6 of the Act and notified in A.P. Gazette on 16.4.2003. Since S.Nos.335/5 and 336/E have been shown as Bhoodan lands, the Company gave an undertaking that the land under acquisition would be utilized for expansion of its industries such as live stocks rearing or fish culturing or agriculture/ horticulture/green belt etc. The LAO issued notice to 3rd respondent and two others to convey their willingness to settle their claims through A.P. Land Acquisition (District Level Negotiation Committee), Rules 1992. The petitioners in response to the notice dated 30-1-2004 protested vide letter dated 6.2.2004 against the acquisition of lands and claimed that 3rd respondent allotted lands to them for agriculture purpose. Possession of lands notified was taken under L.A.Act on 17.2.2004 and the same were handed over to the Corporation. The lands so taken possession under L.A. Act are Ac.25-19 guntas in S.No.335, Ac.17.03 guntas in Survey No.336, Ac.42.22 guntas in total leaving 0.01 gunta covered by graveyard in S.No.335. The possession of the said lands to the extent of Ac.42.22 guntas were handed over by the Corporation to the Company on 19.2.2004. The LAO following the procedure under the L.A.Act has passed an award-dated 23.2.2004 for an extent of Ac.42.22 guntas. The LAO awarded compensation to a tune of Rs.15,03,236/- for an extent of Ac.25.19 guntas in Sy.No.335 and Rs.10,07,566/- for an extent of Ac.7.04 guntas and deferred payment

of compensation for an extent of Ac.9.39 guntas for want of claim. Thus, the lands taken possession under the L.A.Act stood vested with Government w.e.f. 17.2.2004. I deem it appropriate to refer paras 8 and 9 of the counter affidavit and they read as under:

" 8. In regard to paras 12 and 13 of the affidavit of the petitioners, I submit that the lands were requisitioned by the APIIC which is a wholly owned Government Undertaking for public purpose of utilizing the same for industrial use and accordingly the lands were acquired and award was passed under Part II of the L.A.Act. Therefore, the procedure under Part VII of the L.A.Act need not be followed as held by the Honourable Supreme Court. I submit that the lands were acquired for expansion of the existing industry and therefore the allegation that it is for the benefit of single individual which is a private company for slaughtering house and it is not a public purpose is not true and correct and the same is hereby denied.

9. In regard to paras 14 to 16 of the affidavit the petitioners, I submit that the urgency clause under L.A.Act was invoked since the lands were required urgently for industrial purpose. I submit that the allegation of the petitioners that the DN and DD were simultaneously approved and no enquiry u/s 5-A of the Act was conducted in violation of the principles of natural justice and also the provisions of the L.A. Act is hereby denied. The DN and DD were published on different dates duly following the procedure under the L.A.Act. The allegation of the petitioners that the lands were acquired for slaughterhouse and it is not for public purpose and the same is contrary to the aims and objectives of the Bhoodhan movement are not true and correct. It is respectfully submitted that there is no bar to acquire the lands for the Corporation for public purpose of development of industries following the procedure under Part-II of the I.A.Act duly paying the compensation."

6. Counter affidavit of 4th respondent, in brief, is that Mallapuram Chandraiah was the owner and pattadar of an extent of Ac.70-00 cents of land comprising Sy.No.341, 342, 255, 335 and 336 of Zaheerabad village and mandal, Medak District. He donated the said lands in favour of 4th respondent-Board. On the representation-dated 25.7.2002, the Board in its proceedings dated 4.10.2002 allotted the subject lands to the petitioners u/s 14(1) of the A.P. Boodhan and Grambhan Act, 1965. The Board also requested the Mandal Revenue Officer, Zaheerabad for implementation of the names of assignees in the revenue records and to issue D-Form pattas in their

favour. On coming to know that 1st respondent initiated proceedings to acquire land for the purpose of setting up of slaughter house, the 4th respondent-Board informed 1st respondent that the establishment of slaughter house in the land would militate against the objectives of the Board and also ideals preached by Mahatma Gandhi and Acharya Vinobhabave in commemoration of whose philosophy Andhra Pradesh Boodan Yagna Board has been set up. It is further stated in the counter affidavit that adequate land is available elsewhere enabling the industry to start its activity and that the acquisition of subject lands is not in public interest and therefore sought for declaration that the acquisition of the subject lands is unlawful and unsustainable in law.

7. 5th respondent-Company in its counter stated that it is engaged in the activity of processing food items like vegetables, fruits, meat and fish etc. to export the frozen food to various countries. It was allotted 111.727 acres of land in Sy.No.325, Zaheerabad Rural by the A.P. Industrial Infrastructure Corporation Limited under proceedings dated 23.10.1989 and that this respondent has been in possession of that land since then. It is a leading exporter of frozen food to various countries and it provides employment to hundreds of persons. Further this respondent resisted the writ petition contending that the objections raised by the 4th respondent-Board are not legally tenable since the Government is empowered to acquire the land for public purpose and there is no statutory embargo in acquiring lands owned by 4th respondent-Board. The acquisition is for public purpose i.e. industrial activities. This respondent has several agro activities; processing of meat and fish is only one among them. This respondent has also given an undertaking to LAO that the lands in question would be utilized for agro activities.

8. Heard Sri.N.Subba Reddy, learned senior counsel appearing for the petitioners, learned Government Pleader for Land Acquisition appearing for respondents 1 and 2, Sri.D.Prakash Reddy, learned senior counsel appearing for 3rd respondent, Sri.S.Niranjan Reddy, learned counsel appearing for 4th respondent and Sri.V.Srinivas, learned counsel appearing for 5th respondent.

9. Learned senior counsel appearing for the petitioners submits that the acquisition

of land is for the purpose of private company and therefore the procedure prescribed under Part VII of the Act is required to be followed and since the same is not followed in the instant case, dispensing with enquiry u/s 5 A and draft declaration u/s 6 of the Act and further proceedings consequent thereto are to be declared as null and void. It is also submitted by him that the acquisition of the land for expansion of slotter company -5th respondent cannot be termed as a public purpose and therefore dispensing with Sec.5-A inquiry is wholly unsustainable. He refers the draft notification u/s 4(1) of the Act published in Deccan Chronicle dated 26.4.2003 to substantiate his contention that the purpose of acquisition is for allotment of the land to 5th respondent-Company.

10. Learned senior counsel appearing for the 3rd respondent submits that the acquisition of land is for public purpose and therefore the Government is justified in dispensing with the enquiry u/s 5-A by invoking the urgency clause as provided u/s 17(4) of the Act. He refers the expression public purpose as defined in Sec.3 (f) of the Act. He further submits that the expression used in the notification u/s 4 is not vague and instead it is specific that the acquisition is for public purpose. He made elaborate arguments as to how the purpose of 5th respondent – Company can be categorized as public purpose. His line of argument is that 5th respondent company earns considerable foreign exchange through export of its products with a turn over of Rs.118.78 crores. It is submitted by him that the names of the petitioners did not figure in draft notification and draft declaration published in Andhra Pradesh Gazette since no pattas were granted in their favour by the revenue authorities and therefore non-mentioning of their names in draft notification and draft declaration was justified. In support of his submissions, reliance has been placed on the decision of Supreme Court in PRATIBHA NEMA v. STATEOF M.P..

11. Learned counsel appearing for 4th respondent-Board submits that the purpose of allotment of land to the petitioners is for cultivation and the same stood nullified in view of the acquisition of the said lands for establishing a slaughter house which is not in tune with the objectives of the Board. It is also submitted by him that 4th respondent resisted the acquisition of land by filing their objections besides

furnishing the list of persons to whom the lands have been allotted and possession been given. In support of his submissions, reliance has been placed on a decision of Calcutta High Court in GANGADHAR GOSH V. STATE OF WEST BENGAL

12. Learned counsel appearing for the 5th respondent-Company submits that setting up industry by 5TH respondent company is for public purpose and therefore the petitioners cannot question the satisfaction of the Government as to the existence of public purpose. He further submits that the essential condition for acquisition for public purpose is that the cost of acquisition should be borne wholly or in part by the public funds and ordinarily it is not the function of the court to go into the question as to whether the need was genuine or not unless objectives are made to specify that the action taken by the Government was malafide one. What he means to say is that compensation is being paid to the land losers by the Government and therefore Part VII of the Act is not applicable to the facts of the case on hand. In support of his submissions, reliance has been placed on the decision of Supreme Court in PRATIBHA NEMA v. STATEOF M.P.

13. Learned senior counsel appearing for the petitioner submits that the Government is just passing on the amount received from 5th respondent-Company and therefore for all practical purposes the acquisition is for a company simplicitor in which case procedure prescribed in Part VIII of the L.A.Act is to be followed in acquiring the lands in question.

14. It is no more in dispute that 5th respondent is a private company. Sec.4(1) of the notification dated 10-4-2003 published on 26.4.2003 in Deccan Chronicle, Hyderabad reads as follows:

> " Whereas it appears to Government of Andhra Pradesh that the land specified in the schedule below and situated at Zaheerabad village and Mandal, Medak district needed for the public purpose to wit for M/s.Frigerio Conserve Allana Ltd., by APIIC Ltd. Notice to that effect as hereby given to all whom it may concern in accordance with the

> provisions of section 4(1) of the Land Acquisition Act.1 of 1894, as amended by the Land Acquisition Amendment made by the Land Acquisition Act XXXVIII of 1923, and the Governor of Andhra Pradesh hereby authorized Special Deputy Collector L.A. (Ind.), Hyderabad and his staff and workmen to exercise the powers conferred by section 4(2) of the Act under sub section (4) of Section 17 of the Act, the Governor of Andhra Pradesh directs that in view of the urgency of the case, the provisions of Section 5-A of the Act, shall not apply to this case."

Draft declaration dated 16.4.2003 was published in Deccan Chronicle dated 27.4.2003. Sec.5-A of the Act gives a statutory right to oppose a declaration of intended acquisition. The land can be acquired for public purpose as such what the public purpose is should be known to the public to enable the persons interested to make representation under the said proviso. When the proposed acquisition is intended to serve a public purpose in generic sense, the fact that the acquisition is primary for a company will not effect the validity of its attention. The essential condition for acquisition of land for public purpose is that the cost of the acquisition should be borne wholly or in part by the public funds and ordinarily it is not the function of the Court to go into the question as to whether the need was genuine or not unless objections are made to specify that the action taken by the Government was malafide one. In case of acquisition for a company simplicitor, a declaration u/s 6 of the Act cannot be without satisfying the requirements of Part VII of the Act but an acquisition for a company can also be made for a public purpose if costs or a portion of the costs of acquisition is to come out of public funds, in such a case it is not necessary to go through the procedure laid down in para VII of the Act.

15. In order to appreciate the contentions of the parties set out above in proper perspective, it would be appropriate to advert to certain basic provisions of the Act and recapitulate the well settled principles relating to public purpose and acquisition of land under Part II and Part VII of the Act. Sec.4(1) of the Act which occurs in Part II of the Act contemplates a notification to be published in the official gazettee etc., whenever it appears to the appropriate Government that the land in any locality is needed for any public purpose or for a company. Thereupon, various steps enumerated in sub-section (2) could be undertaken by the authorized officer. There

is an inclusive definition of public purpose in clause (f) of Sec.3. Many instances of public purpose specified therein would have perhaps been embraced within the fold of public purpose as generally understood. One thing that deserves particular notice is the rider at the end of clause (f) by which the acquisition of land for companies is excluded from the purview of the expression public purpose. Sec.3(f)(viii) of the L.A.Act, reads as follows:

" the provision of any premises or building for locating a public office, but does not including acquisition of land for companies."

Section 2(e) of the L.A. Act reads as follows:

"(i) a company as defined in section 3 of the Companies Act, 1956, other than a Government company referred to in clause (cc);

ii. a society registered under the Societies Registration Act, 1860, or under any corresponding law for the time being in force in a State, other than a society referred to in clause (cc);

iii. a cooperative society within the meaning of any law relating to a cooperative societies for the time being in force in any State, other than a cooperative society referred to in clause (cc);"

Section 6 of the L.A.Act deals with declaration of intended acquisition and it is thus:

" 6. Declaration that land is required for a public purpose: (1) Subject to the provisions of Part VII of this Act, (when the (appropriate Government) is satisfied, after considering the report, if any, made under section 5A, sub-section (2),) that any particular land is needed for a public purpose, or for a company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorized to certify its order (and different declarations may be made from time to time in respect of different parcels of any land covered by the same notification under section 4, sub-section (1), irrespective of whether one report or different reports has or have been made (wherever required) under section 5A, sub-section (2))"

Section 6 of the L.A.Act provides for declaration to be made by the Government or its duly authorized Officer that a particular land is needed for public purpose or for a company when the Government is satisfied after considering the report, if any, made

under Sec.6(a)(ii) of the L.A.Act. It is explicitly made clear that such declaration shall be subject to the provisions of Part VII of the Act, which bears heading “Acquisition of Land for companies”. Thus, section 6 reiterates the apparent distinction between the acquisitions for a public purpose and acquisition for a company. There is an important and crucial proviso to Sec.6 of the Act which has a bearing on the question whether the acquisition is for a public purpose or for a company. The second proviso lays down as no such declaration shall be made unless the compensation shall be awarded for such property is to be paid by a company wholly or partly out of the public revenues or some funds controlled or managed by local authority. Explanation (2) then makes it clear that whereas the compensation to be awarded is to be paid out of the funds of the Corporation owned or controlled by a State, such compensation shall be deemed to be compensation paid out of public revenue. Thus, a provision for payment of compensation, wholly or partly, out of the public revenues or some fund controlled or managed by a local authority is *sine qua non* for making a declaration to the effect that a particular land is needed for a public purpose. Even if the public purpose is behind the acquisition for a company, it shall not be deemed to be an acquisition for a public purpose unless at least part of the compensation is payable out of public revenues which includes the fund of a local authority or the funds of a Corporation owned or controlled by the State.

16. Section 17 of the Act deals with special powers in case of urgency. Power under section 17(1) and 17(4) can be exercised when the Government takes the view that there is urgency as regards acquisition of the land. Urgency in regard to acquisition of the land would arise when the public purpose is to be urgently implemented and when that situation arises, the two stages of possible delay in the acquisition of land, one by holding the inquiry under Section 5-A and the other by going through the award proceedings are permitted to be eliminated by the Government. The elimination of these two stages is thus consequence of urgency and the determination of urgency is not limited by a consideration of the time likely to be occupied by these two stages alone, though they are certainly relevant. Section 17(1) and (4) are two independent provisions capable of being enforced at two different stages of land acquisition proceedings. Action under Section 17(1) can be taken only after notification under Sections 4 and 6 and the notice under Section 9(1) have been issued and objections, if any, under Section 5-A have been

disposed of. But the only condition precedent to the exercise of the power under section 17(4) is that the appropriate Government should be of the opinion that Section 17(1) and (2) apply to that case. Both the sub-sections provide for cases of urgency.

17. Part VII deals with acquisition of land for companies. Under section 39, the provisions of Sec.6 to 16 (both inclusive) and Secs.18 to 37 (both inclusive) shall not be in force in order to acquire land for any company under this part, unless with the previous consent of the appropriate government or unless the company shall have executed the agreement. It indicates that till the conditions mentioned therein are fulfilled the operation of Secs.6 to 37 remain in abeyance, but after the conditions are fulfilled the provisions of Secs.6 to 37 become applicable. Provisions of Secs.39 and 40 indicate that in case of acquisition of land for the purpose of a company, proceedings under section 5A have to precede the issue of an agreement and it is not essential that the copy of the agreement should be supplied to a person before he files an objection under section 5A.

18. An analysis of the above referred provisions of the Act indicate that the existence or non existence of a public purpose is not a primary distinguishing factor between the acquisition under Part II and acquisition under Part VII. The real point of distinction seems to be the source of funds to cover the cost of acquisition. In other words, the second proviso to Sec.6(1) is the main dividing ground for the two types of acquisitions. At this juncture I deem it appropriate to refer para 21 of the cited decision, which reads as under:

> "**(20)** 'COMPANY' is defined to mean by section 3(e) as (i) a company within the meaning of section 3 of the Companies Act other than government company, (ii) a society registered under the Societies Registration Act other than a co-operative society referred to in clause (cc) and (iii) a co-operative society governed by the law relating to the co-operative societies in force in any State other than a co-operative society referred to in clause (cc). An industrial concern employing not less than 100 workmen and conforming to the other requirements specified in section 38-A is also deemed to be a company for the purposes of Part VII. In order to acquire land for a company as defined above, the previous consent of the appropriate government is the first requirement and secondly the execution of agreement by the company conforming to the requirements of section 41 is another essential formality. Section 40 enjoins that consent should not be given by the appropriate

government unless it is satisfied that (1) the purpose of the acquisition is to obtain land for erection of dwelling houses for workmen or for the provision of amenities connected therewith; (2) that the acquisition is needed for construction of some building or work for a company which is engaged or about to engage itself in any industry or work which is for a public purpose; and (3) that the proposed acquisition is for the construction of some work that is likely to be useful to the public. The agreement contemplated by section 41 is meant to ensure the compliance with these essentialities. It is also meant to ensure that the entire cost of acquisition is borne by and paid to the government by the company concerned. Thus, it is seen that even in a case of acquisition for a company, public purpose is not eschewed. It follows, therefore, that the existence or nonexistence of a public purpose is not a primary distinguishing factor between the acquisition under Part II and acquisition under Part VII. The real point of distinction seems to be the source of funds to cover the cost of acquisition. In other words, the second proviso to section 6(1) is the main dividing ground for the two types of acquisition. This point has been stressed by this Court in Srinivasa Co-operative House Building Society Limited v. Madam G. Sastry:

"...IN the case of an acquisition for a company simpliciter, the declaration cannot be made without satisfying the requirements of Part VII. But that does not necessarily mean that an acquisition for a company for a public purpose cannot be made otherwise than under the provisions of Part VII, if the cost or a portion of the cost of the acquisition is to come out of public funds. In other words, the essential condition for acquisition is for a public purpose and that the cost of acquisition should be borne, wholly or in part, out of public funds..."

THE legal position has been neatly and succinctly stated by Wanchoo, J. speaking for the constitution bench in R.L. Arora v. State of Uttar Pradesh This is what has been said:

"THEREFORE, though the words 'public purpose' in sections 4 & 6 have the same meaning, they have to be read in the restricted sense in accordance with section 40 when the acquisition is for a company under section 6. In one case, the notification under section 6 will say that the acquisition is for a public purpose; in the other case the notification will say that it is for a company. The proviso to section 6(1) shows that where the acquisition is for a public purpose, the compensation has to be paid wholly or partly out of public revenues or some fund controlled or managed by a local authority. Where however the acquisition is for a company, the compensation would be paid wholly by the company. Though, therefore, this distinction is there where the acquisition is either for a public purpose or for a company, there is not a complete dichotomy between acquisitions for the two purposes and it cannot be maintained that where the acquisition is primarily for a company it must always be preceded by action under Part VII and compensation must always be paid wholly by the company. A third class of cases is possible where the acquisition may be primarily for a company but it may also be at the same time for a public purpose and the whole or part of compensation may be paid out of public revenues or some fund controlled or managed by a local authority. In such a case though the acquisition may look as if it is primarily for a company it will be covered by that part of section 6 which lays down that acquisition may be made for a public purpose if the whole part of the compensation is to be paid out of the public revenues or some fund controlled or managed by a local authority. Such was the case in Pandit Jhandu Lal v. State of Punjab [AIR (1961) SC 343].....It is only where the acquisition is for a company and its

cost is to be met entirely by the company itself that the provisions of Part VII apply."

19. A question came up for consideration before a Division Bench of this Court in I.SUBBA RAO V. GOVT. OF A.P that in case of acquisition of land for the purpose of APSRTC which part of the Act i.e. Part II or Part VII is to be followed. In that context the it was held that provisions of Part VII of the Act are to be followed in case of land being acquired by APSRTC. Para 7 of the judgment need to be noted and it is thus:

" 7. ……..If the land is needed for public purpose, the compensation to be awarded must be paid wholly or partly out of the public revenues and if it is for a company the provisions of Part VII of the Act are to be necessarily followed and the compensation in that event could be paid wholly by the company. As the very section 6 provides it is only subject to the provisions of Part VII of the Act that a declaration under that section could be made in cases where the acquisition is for a company. It is already held that Andhra Pradesh State Road Transport Corporation for which the land is acquired, is a company as defined under the Land Acquisition Act. Further, it is an admitted fact that the provisions of Part VII of the Act are not followed in the instant case. The Supreme Court in similar circumstances held that the acquisition proceedings are vitiated. Adopting the same reasoning given in VALJIBHAI V. STATE OF BOMBAY we hold that the acquisition impugned in this case having been made for the benefit of a company, APSRTC, though for a public purpose, is bad as no part of the compensation is to come out from the public revenues and the provisions of Part VII of the Act have not been followed."

In SHYAM BEHARI V. STATE OF M.P. it has been held that when the acquisition is for a company simplicitor there must be fullest compliance with the requirements of Part VII of the Act. Sec.6 is subject to the provisions of Part VII of the Act. The conclusiveness to a declaration under Sec.6(1) for the acquisition of land for a company simpliciter cannot be attached if the requirements of Part VII are not complied with. In STATE OF WEST BENGAL V. P.N.TALUKDAR the Supreme Court held that when the acquisition is for public purpose the whole or part of the compensation is to come out of the public revenue etc. or where the acquisition is for a company the whole of the compensation is to be paid by the company.

20. Keeping in view the proposition of law laid down in the above referred cases, the core question that falls for consideration is whether the acquisition in this case was for public purpose in which case the whole or part of the compensation is to come out of public revenues or whole of the compensation is to come from a company.

21. An argument has been advanced by learned counsel appearing for the 5th respondent-company that the 5th respondent-Company deposited the compensation with the LAO and the LAO in turn has to pass it on to the land owners and thus it is to be treated that the compensation is paid out of public revenues. To buttress his submissions reliance has been placed on the decision of Supreme Court in 1st cited decision. In the cited case, the advance lease premium was collected from the company and payment was made in terms of MOU. Coming to the facts of the case on hand, the very acquisition of land is for allotment of the same to the 5th respondent-company. The entire compensation is to be paid by 5th respondent-company. No part of the compensation is to be paid out of the public revenues. Therefore, it can be said without any controversy that the acquisition is for 5th respondent-Company and the whole of the compensation is to be paid by it, in which case the procedure contemplated under Part VII of the L.A.Act is to be followed. Consequences of not following the provisions of Part VII of the Act makes Sec.6 declaration and consequential proceedings invalid.

22. For the foregoing reasons, this writ petition is allowed setting aside the draft declaration u/s 6 of the Act and consequential proceedings insofar as lands claimed by the petitioners. But the notification issued u/s 4(1) of the Act holds good. Further proceedings in pursuance of Sec.4 (1) notification are required to be followed in accordance with the provisions of Part VII of the L.A.Act. No order as to cost.

Dated: 10-11-2005. (B.Seshasayana Reddy, J)

Tnb

LR COPY TO BE MARKED.

THE HONOURABLE SRI JUSTICE

B.SESHASAYANA REDDY

WRIT PETITION NO.5921 OF 2004

DISPOSED OF ON 10-11-2005.